DOT/tcg 6/29/2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish A Framework for Network Architecture Development of Dominant Carrier Networks.	Rulemaking 93-04-003 (Filed April 7, 1993)
Investigation on the Commission's Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks.	Investigation 93-04-002 (Filed April 7, 1993) **(Verizon UNE Phase)**

ADMINISTRATIVE LAW JUDGE'S RULING DENYING MOTION TO COMPEL DISCOVERY

On June 15, 2004, Verizon California Inc. (Verizon) moved to compel a discovery response from AT&T Communications of California, Inc. (AT&T) regarding AT&T's internal cost of capital. Verizon requests information pertaining to the cost of capital that AT&T uses to evaluate local exchange projects, claiming that the Commission and parties are entitled to consider this information in evaluating the appropriate cost of capital for a carrier operating in a competitive market. Verizon cites the FCC's Triennial Review Order as clarifying that "a TELRIC-based cost of capital should reflect the risks of a competitive market."[1] Verizon asserts that the cost of capital AT&T uses to evaluate its own investments in local exchange facilities is directly relevant to the

[1] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* 18 FCC Rcd 16978, para. 680, (2003).

appropriate cost of capital to use in setting the unbundled network element (UNE) rates Verizon will charge competitors.

AT&T responds that its internal cost of capital is immaterial to the issues in this proceeding because the relevant cost of capital should reflect the risks incurred in leasing UNEs to competitors at wholesale, not the risks inherent in AT&T's local business. According to AT&T, the risks and nature of AT&T's entry as a competitor into the local exchange business are far different from those of Verizon's wholesale UNE business. Further, AT&T argues that the internal cost of capital, or "hurdle rates," that Verizon seeks are not equivalent to and are usually higher than a pure cost of capital in order to compensate for the tendency of project proponents to be overly optimistic about expected investment returns.

Verizon's motion to compel access to AT&T's internal cost of capital is denied. I disagree with Verizon that the internal cost of capital AT&T uses to evaluate its investments in local exchange facilities is relevant to the cost of capital for use in this proceeding. Rather, the relevant competitive risks to assess and reflect in a total element long run incremental cost (TELRIC) cost of capital are the risks inherent in building facilities and providing UNEs. AT&T is not in the business of providing UNEs and, as AT&T points out in its response, it is a much smaller player in the local telephone business in terms of both revenues and market share. Thus, AT&T's internal cost of capital, or hurdle rate, used to evaluate investments is not relevant to our analysis in this proceeding.

Therefore, **IT IS RULED** that Verizon's motion to compel a discovery response to Verizon's eleventh set of data requests is denied.

Dated June 29, 2004, at San Francisco, California.

/s/ DOROTHY J. DUDA

Dorothy J. Duda
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by electronic mail served the attached Administrative Law Judge's Ruling Denying Motion to Compel Discovery to the parties to which an electronic mail address has been provided, on all parties of record in this proceeding or their attorneys of record.

Dated June 29, 2004, at San Francisco, California.

TERESITA C. GALLARDO
Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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